

SUPREME COURT OF THE UNITED STATES

Writ of Habeas Corpus

1931

THE UNITED STATES, APPELLANT

VERSUS  
THE NORTH AMERICAN TRANSPORTATION & TRADING COMPANY

1932

THE NORTH AMERICAN TRANSPORTATION & TRADING COMPANY, APPELLEE

THE UNITED STATES

APPEALS FROM THE COURT OF CLAIMS

FILED MAY 1, 1931

(27008, 27001)

**SUPREME COURT OF THE UNITED STATES.**

**OCTOBER TERM, 1918. .**

---

**No. 917. .**

**THE UNITED STATES, APPELLANT,**

**vs.**

**THE NORTH AMERICAN TRANSPORTATION & TRADING  
COMPANY.**

---

**No. 918.**

**THE NORTH AMERICAN TRANSPORTATION & TRADING  
COMPANY, APPELLANT,**

**vs.**

**THE UNITED STATES.**

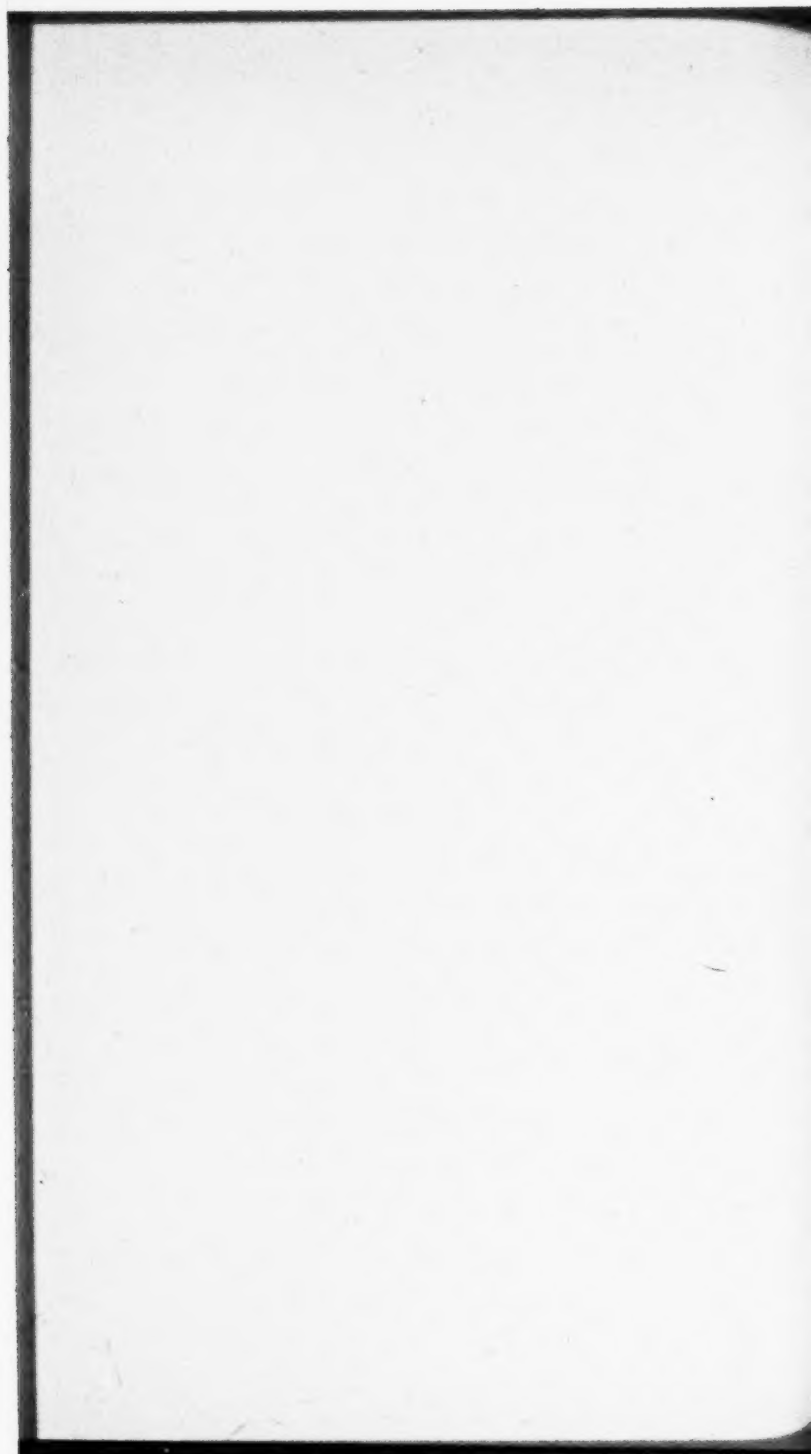
---

**APPEALS FROM THE COURT OF CLAIMS.**

---

**INDEX.**

	Original.	Print.
Original petition .....	1	1
History of proceedings .....	10	6
Amended petition .....	10	6
General traverse .....	19	12
Argument and submission of case .....	19	12
Findings of fact, conclusion of law, and opinion of the court .....	20	12
Judgment of the court .....	24	16
Proceedings after entry of judgment .....	24	16
Defendants' application for, and allowance of, an appeal .....	25	16
Claimant's application for, and allowance of, an appeal .....	25	16
Clerk's certificate .....	26	17



1 I. Petition. Filed December 7, 1906.

In the Court of Claims.

THE NORTH AMERICAN TRANSPORTATION & TRADING COM-  
pany, a corporation, No. 29,905.  
v.  
THE UNITED STATES.

PETITION.

Filed Dec. 7, 1906.

*To the honorable the Court of Claims:*

The above-named petitioner, the North American Transportation & Trading Company, respectfully represents:

I.

That it is a company duly incorporated under the laws of the State of Illinois engaged in carrying on a general transportation business between different places in the United States and elsewhere, and also a general trading and supply business in various places.

2 II.

That in the due course of its business, as above recited, claimant did, on July 1, 1899, by its duly authorized agent, one N. P. R. Hatch, locate twenty acres of placer mining ground at the confluence of the Nome River and the Bering Sea in the Territory of Alaska, by complying with all legal requirements therefor, including the filing for record on August 8, 1899, at 9.55 a. m. with the officer of the United States designated for that purpose, of a location notice as follows:

"UNITED STATES OF AMERICA,  
"DISTRICT OF ALASKA,  
"Cape Nome Mining District." ss.

"Notice is hereby given that the undersigned, having complied with the requirements of Chapter Six, Title Thirty-two, of the revised Statutes of the United States and the local customs, laws and regulations, has located twenty (20) acres of placer mining ground, situated in Cape Nome Mining District, described as follows, to wit: Commencing at a stake about 1,000 feet from the mouth of Nome River on the southeast bank thereof and at the Northwest corner stake of the N. A. T. & T. Co. trading post; thence 660 feet in a southerly direction to stake; thence 1,320 feet in an easterly direction to stake; thence 660 feet more or less in a northerly direc-

tion to stake; thence 1,320 feet in a westerly direction to stake and place of beginning."

This notice is posted on the No. 1 stake of said claim. Discovered July 1, 1899. Located July 1, 1899.

Attest:

GEO. R. WORN,  
NORTH AMERICAN TRANSPORTATION &  
TRADING COMPANY,  
*Locator,*

By N. P. R. HATCH, *Its Agent.*

3 This notice was thereupon duly recorded in volume 16 at page 63 of the record kept therefor as required by law.

### III.

That claimant, within one year after the discovery and location of said placer mining claim, looking to the development of said claim had erected thereon a tool and storage log house, 14 feet wide and 25 feet long, of the value of \$387.50, had sunk a timbered shaft 5 by 7 by 22 feet in depth thereon of the value of \$220, for the purpose of determining the value of said ground for mining purposes, and had set a line of posts 16 feet apart around the land side of said claim of the value of about \$100.

### IV.

That a trading site had been located by one R. J. Embleton in the vicinity of said placer mining claim containing three and three hundred sixty-nine one thousandths acres of land, which said site was transferred to claimant by said locator on November 2, 1899, as the same was described in Survey first numbered 15, and subsequently numbered 450, and duly recorded as made by C. W. Garside, Deputy United States Surveyor, on October 28, 1899.

### V.

That said placer mining claim was examined by United States Deputy Mineral Surveyor, Charles W. Garside, on May 22, 1900, who made the following report of such examination; saying in part:

"I, herewith submit the following report, made in compliance therewith:

4 "The surface embraced within the exterior boundaries of the official survey of the said claim, ascends gradually from the beach of Bering Sea and abruptly from Nome River. The soil consists of decomposed mineral-bearing schists, slates and quartz, auriferous sand and gravel; upon which has been deposited a layer of loam and alluvium, covered with moss and short grass vegetation. No timber. The only stream is Nome River, along the N. W. side of the claim. A tool and storage log house, dims. 14 by 25 feet, the

N. W. corner of which bears from corner No. 1, Sur. No. 327, S. 71° 00' E. 507 ft. dist. Value \$387.50. A timbered shaft, dims. 5 by 7 by 22 ft. deep, the center of which bears from corner No. 1, Sur. No. 327, S. 51° 30' E. 598 ft. dist. Value \$220. Total expenditures made by the claimant or its grantors \$607.50.

"The nearest post office to the claim is Nome City, a mining camp of about 2,000 population, located at the confluence of Snake River, with Bering Sea, about 3½ miles northwesterly from the claim. There is no known lode, or vein of quartz or other rock in place, containing any of the precious metals, within the exterior boundaries of the claim, or in the immediate vicinity. There are no mines, salt licks, salt springs, or mill seats upon the claim. This claim is a valuable deposit of auriferous ruby sand and gravel and is well adapted for placer mining. The shaft sunk near the center of the southwest side of the claim has exposes auriferous ruby sand and gravel, increasing in richness going down and after sufficient depth is attained, or bed rock struck, drifts can be run on bed rock, and by means of a pump or machinery the underground workings can be drained, and the entire claim can be advantageously and economically worked, both in winter and summer, being within close proximity to Nome City, a place of trade and mining supplies."

CHAS. W. GARSIDE,

*U. S. Deputy Mineral Surveyor for Alaska.*

Examination made May 22, 1900.

This report is accompanied by the following affidavit:

5

"OATH OF U. S. DEPUTY MINERAL SURVEYOR.

"Under General Land Office Circular 'N' of September 23, 1882.

"I, Chas. W. Garside, U. S. deputy mineral surveyor, do solemnly swear that in pursuance of an order received from the U. S. Surveyor General for Alaska, dated , 18 , I have made, under the provisions of General Land Office Circular 'N,' approved September 23, 1882, a personal and thorough examination, upon the premises, of the placer mining claim of the North American Transportation and Trading Co., known as the North American Transportation and Trading Co. Placer situate in Cape Nome Mining District, in the Yukon Land Dist., embracing an area of 15,176 acres. On unsurveyed lands and that my report of such examination hereto attached, is specific and in detail, and is a full and true statement of the facts upon all the points specified in said circular.

CHAS. W. GARSIDE,

*U. S. Deputy Mineral Surveyor.*

"Subscribed and sworn to by the said Chas. W. Garside, U. S. deputy mineral surveyor, before me, Marcus Roberts, this 18th day of September, 1900.

"Notary public in and for the District of Alaska."

[SEAL.]

VI.

That during the summer of 1900, a party of Army officers, consisting among others of General Randall, Major Van Orsdel, and Captain Richardson, visited claimant's placer mining claim while looking for a suitable site for a military reservation in that vicinity. Their attention was called to claimant's placer mining claim and trading site location at that time by David F. Lane and F. W. Mettler, representatives of claimant who accompanied said officers to the location.

6

VII.

That on December 20, 1900, General Orders, Number 141 was issued from the Adjutant General's Office, Headquarters of the Army, as follows:

"HEADQUARTERS OF THE ARMY,  
ADJUTANT GENERAL'S OFFICE,  
WASHINGTON, December 20, 1900.

"GENERAL ORDERS }  
No. 141.

"The following from the War Department is published to the Army for the information and guidance of all concerned:

WAR DEPARTMENT, WASHINGTON, December 20, 1900.

The President of the United States having by order of December 8, 1900, reserved from sale and set aside for military purposes the following described tract of land at Cape Nome, on Bering Sea, Alaska, on the east side of the Nome River, near its mouth, and three and one-half miles from the town of Nome, subject, however, to any legal rights which may exist to any land within its limits, the same is announced as the military reservation of Fort Davis, Alaska:

"Beginning at a stake at point of 'spit' mouth of Nome River, and running thence south of east along the coast of Bering Sea one mile; thence north to center of channel of Nome River; thence down said channel to mouth of river opposite stake first mentioned.

G. D. MEIKLEJOHN,  
Acting Secretary of War.

"WAR DEPARTMENT, WASHINGTON, December 20, 1900.

"The President of the United States having by order of December 8, 1900, reserved from sale and set aside for military purposes the following described tract of land at Cape Nome, on Bering Sea, Alaska, in the town of Nome, subject, however, to any legal rights which may exist to any land within its limits, the same is announced as a public reservation to be retained for the present under the control of the War Department:

"Initial point bearing S. 66° 50' E. 1,669 feet from U. S. Land Mark No. 1, near mouth of Snake River; from said initial stake N.



23° E. 107 feet; thence N. 69° W. 14 feet; thence N. 27° 25' E. 160 feet; thence S. 70° E. 152 feet; thence S. 26° 15' W. 422 feet 8 inches to southeast corner on beach at mean high tide; thence N. 69° W. 102 feet; thence N. 27° 25' E. 146 feet; thence N. 57° W. 35 feet to point of beginning.

G. D. MEIKLEJOHN,  
*Acting Secretary of War.*

By command of Lieutenant General MILES;

THOMAS WARD,  
*Acting Adjutant General."*

### VIII.

That since the said order of the President dated December 8, 1900, the United States has at all times occupied and held possession of claimant's said placer claim and has prevented claimant from either developing the same or performing the annual amount of assessment work thereon as required by law.

Claimant has at all times since the United States took possession thereof protested against such taking, use, and occupancy of its property, and demanded that it be restored to the possession thereof or properly compensated therefor. Nevertheless the United States has not only denied claimant such possession but has maintained an armed force on said claim and has constructed buildings thereon and occupied the same for an Army post, to such an extent that it has been and is now impossible for claimant to carry on mining operations there, to its great loss and damage.

8 The fair and reasonable value of said placer mining claim when taken by the United States was not less than one hundred thousand dollars (\$100,000). The fair and reasonable value of the use and occupancy of said claim by the United States since it was so taken by the United States on December 8, 1900, is not less than seven thousand five hundred dollars (\$7,500) for each and every year since that date.

### IX.

Claimant therefore, by reason of the facts herein stated avers that the said defendant, the United States, became and was indebted to it for the value of said placer mining claim so taken from it, the sum of \$100,000, and for the use and occupancy thereof from December 8, 1900, the further sum of \$7,500 per annum.

In all the defendant became and was indebted to claimant in the full sum of \$100,000 and \$7,500 per annum from December 8, 1900, which it has declined and refused to pay, and still refuses to pay, and therefore claimant prays judgment of this court against the defendant, the said United States, for such sum; further averring that its said claim has not, nor any part thereof, nor any interest therein, been transferred or assigned by it, and that claimant is



justly entitled to said last mentioned amount from the said defendant after allowing all just credits and offsets.

THE NORTH AMERICAN TRANSPORTATION &  
TRADING COMPANY,

By McGOWAN, SERVEN & MOHUN,

*Attorneys for petitioner.*

McGOWAN, SERVEN & MOHUN,  
1419 F St., N. W., Washington, D. C.

9 DISTRICT OF COLUMBIA, }  
City of Washington, } ss.

Before me, the undersigned, a notary public in and for the said District and city, personally appeared A. R. Serven, one of the attorneys for the claimant herein, and being duly authorized to verify this petition, and being duly sworn deposes and says that he has read the foregoing petition and knows the contents thereof; that the matters and things therein stated of his own knowledge are true and that the matters and things therein stated upon information and belief he believes to be true.

A. R. SERVEN.

Subscribed and sworn to before me this 7th day of December, A. D. 1906.

MYDDELTON WOODVILLE,  
Notary Public, D. C.

[SEAL.]

10 II. History of proceedings.

On July 31, 1907, the defendants filed a motion to require claimant to make its petition more definite and certain.

On July 29, 1911, Messrs. Serven & Joyce filed a motion (with power attached) to be substituted as attorneys of record. On August 2, 1911, this motion was allowed by the court.

On April 26, 1915, the claimant filed an answer to the defendants' motion to make the petition more definite and certain.

On April 16, 1918, the claimant was allowed (in open court) to file an amended petition, which is as follows:

III. Amended petition. Filed April 16, 1918.

*To the honorable the Court of Claims:*

The above-named petitioner, the North American Transportation & Trading Co., respectfully represents:

I.

11 That it is a company duly incorporated under the laws of the State of Illinois engaged in carrying on a general transportation business between different places in the United States and elsewhere, and also a mining and general trading and supply business in various places, and has at all times borne true allegiance

to the Government of the United States, and has not in any way voluntarily aided or abetted or given encouragement to rebellion against the said Government and that it believes the facts herein stated to be true.

## II.

That in the due course of its business, as above recited, claimant did, on July 1, 1899, by its duly authorized agent, one N. P. R. Hatch, locate twenty acres of placer mining ground at the confluence of the Nome River and the Bering Sea in the Territory of Alaska, by complying with all legal requirements therefor, including the filing for record on August 8, 1899, at 9.55 a. m. with the officer of the United States designated for that purpose, of a location notice as follows:

"UNITED STATES OF AMERICA,

"District of Alaska,

"Cape Nome Mining District, ss:

"Notice is hereby given that the undersigned, having complied with the requirements of chapter 6, title 32, of the Revised Statutes of the United States and the local customs, laws, and regulations, has located 20 acres of placer mining ground, situated in Cape Nome mining district, described as follows, to wit: Commencing at a stake about 1,500 feet from the mouth of Nome River on the southeast bank thereof and at the northwest corner stake of the N. A. T. & T. Co. trading post; thence 660 feet in a southerly direction to stake; thence 1,320 feet in an easterly direction to stake; thence 660 feet more or less in a northerly direction to stake; thence 1,320 feet in a westerly direction to stake and place of beginning.

12 "This notice is posted on the No. 1 stake of said claim. Discovered July 1, 1899. Located July 1, 1899.

"NORTH AMERICAN TRANSPORTATION  
& TRADING COMPANY,

Locator.

"By N. P. R. HATCH, *Its Agent.*"

"Attest:

"GEO. R. WORN."

This notice was thereupon duly recorded in volume 16, at page 63, of the record kept therefor as required by law.

## III.

That claimant, within one year after the discovery and location of said placer mining claim, looking to the development of said claim, had erected thereon a tool and storage log house, 14 feet wide and 25 feet long, of the value of \$387.50, had sunk a timbered shaft 5 by 7 by 22 feet in depth thereon of the value of \$220.00, for the purpose of determining the value of said ground for mining purposes, and had set a line of posts 16 feet apart around the land side of said claim of the value of about \$100.00.

## IV.

That a trading site had been located by one R. J. Embleton in the vicinity of said placer mining claim containing three and three hundred sixty-nine one-thousandths acres of land, which said site was transferred to claimant by said locator on November 2, 1899, as the same was described in survey first numbered 15, and subsequently numbered 450, and duly recorded as made by C. W. Garside, deputy United States surveyor, on October 28, 1899.

13

## V.

That said placer mining claim was examined by United States Deputy Mineral Surveyor Charles W. Garside on May 22, 1900, who made the following report of such examination, saying in part: "I herewith submit the following report, made in compliance therewith:

"The surface embraced within the exterior boundaries of the official survey of the said claim, ascends gradually from the beach of Bering Sea and abruptly from Nome River. The soil consists of decomposed mineral-bearing schists, slates, and quartz, auriferous sand and gravel; upon which has been deposited a layer of loam and alluvium, covered with moss and short grass vegetation. No timber. The only stream is Nome River, along the N. W. side of the claim. A tool and storage log house, dims. 14 x 25 feet, the N. W. corner of which bears from corner No. 1, Sur. No. 327, S. 71° 00' E. 507 ft. dist. Value \$387.50. A timbered shaft, dims. 5 x 7 x 22 ft. deep the center of which bears from Cor. No. 1, Sur. No. 327, S. 51° 30' E. 589 ft. dist. Value \$220.00. Total expenditures made by the claimant or its grantors \$607.50.

"The nearest post office to the claim is Nome City, a mining camp of about 2,000 population, located at the confluence of Snake River, with Bering Sea, about 3½ miles northwesterly from the claim. There is no known lode, or vein of quartz or other rock in place, containing any of the precious metals, within the exterior boundaries of the claim, or in the immediate vicinity. There are no mines, salt licks, salt springs, or mill seats upon the claim. This claim is a valuable deposit of auriferous ruby sand and gravel and is well adapted for placer mining. The shaft sunk near the center of the southwest side of the claim has exposed auriferous ruby sand and gravel, increasing in richness going down and after sufficient depth is attained or bed rock struck, drifts can be run on bed rock, and by means of a pump or machinery the underground workings can be drained, and the entire claim can be advantageously and economically worked, both in winter and summer, being within close proximity to Nome City, a place of trade and mining supplies."

"CHAS. W. GARSIDE,

*"U. S. Deputy Mineral Surveyor for Alaska.*

"Examination made May 22, 1900."

This report is accompanied by the following affidavit:

"OATH OF U. S. DEPUTY MINERAL SURVEYOR.

"Under General Land Office Circular 'N' of September 23, 1882.

"I, Chas. W. Garside, U. S. deputy mineral surveyor, do solemnly swear that in pursuance of an order received from the U. S. Surveyor General for Alaska, dated ———, 18—, I have made, under the provisions of General Land Office Circular 'N,' approved September 23, 1882, a personal and thorough examination, upon the premises, of the placer mining claim of the North American Transportation and Trading Co., known as the North American Transportation and Trading Co. Placer situate in Cape Nome mining district, in the Yukon land dist., embracing an area of 15.176 acres. On unsurveyed lands and that my report of such examination hereto, attached, is specific and in detail, and is a full and true statement of the facts upon all the points specified in said circular.

"CHAS. W. GARSIDE,

"U. S. Deputy Mineral Surveyor."

"Subscribed and sworn to by the said Chas. W. Garside, U. S. deputy mineral surveyor, before me, this 18th day of September, 1900.

[SEAL.]

"MARCUS ROBERTS,

"Notary Public in and for the District of Alaska."

15

VI.

That during the summer of 1900, a party of Army officers, consisting among others of General Randall, Major Van Orsdel, and Captain Richardson, visited claimant's placer mining claim while looking for a suitable site for a military reservation in that vicinity. Their attention was called to claimant's placer mining claim and trading-site location at that time by David F. Lane and F. W. Mettler, representatives of claimant, who accompanied said officers to the location.

VII.

That on December 20, 1900, General Orders Number 141 was issued from The Adjutant General's Office, Headquarters of the Army, as follows:

"HEADQUARTERS OF THE ARMY,

"ADJUTANT GENERAL'S OFFICE,

"Washington December 20, 1900.

"GENERAL ORDERS, }  
No. 141.

"The following from the War Department is published to the Army for the information and guidance of all concerned:

"WAR DEPARTMENT,

"Washington, December 20, 1900.

"The President of the United States, having by order of December 8, 1900, reserved from sale and set aside for military purposes the

following-described tract of land at Cape Nome, on Bering Sea, Alaska, on the east side of the Nome River, near its mouth, and three and one-half miles from the town of Nome, subject, however, to any legal rights which may exist to any land within its limits, the same is announced as the military reservation of Fort Davis, Alaska:

16 “Beginning at a stake at point of “spit” mouth of Nome River, and running thence south of east along the coast of Bering Sea one mile; thence north to center of channel of Nome River; thence down said channels to mouth of river opposite stake first mentioned.

“G. D. MEIKLEJOHN,  
“*Acting Secretary of War.*”

“WAR DEPARTMENT,  
“WASHINGTON, December 20, 1900.

“The President of the United States having by order of December 8, 1900, reserved from sale and set aside for military purposes the following described tract of land at Cape Nome, on Bering Sea, Alaska, in the town of Nome, subject, however, to any legal rights which may exist to any land within its limits, the same is announced as a public reservation to be retained for the present under the control of the War Department:

“Initial point bearing S. 66° 50' E. 1,669 feet from U. S. land mark No. 1, near mouth of Snake River; from said initial stake N. 23° E. 107 feet; thence N. 69° W. 14 feet; thence N. 27° 25' E. 160 feet; thence S. 70° E. 152 feet; thence S. 26° 15' W. 422 feet 8 inches to southeast corner on beach at mean high tide; thence N. 69° W. 102 feet; thence N. 27° 25' E. 146 feet; thence N. 57° W. 35 feet to point of beginning.

“G. D. MEIKLEJOHN,  
“*Acting Secretary of War.*”

“By command of Lieutenant General MILES.

“THOMAS WARD,  
“*Acting Adjutant General.*”

### VIII.

That since the said order of the President dated December 8, 1900, the United States has at all times occupied and held possession of claimant's said placer claim and has prevented claimant from  
17 either developing the same or performing the annual amount of assessment work thereon as required by law.

Claimant has at all times since the United States took possession thereof protested against such taking, use, and occupancy of its property and demanded that it be restored to the possession thereof or properly compensated therefor. Nevertheless the United States has not only denied claimant such possession but has maintained an armed force on said claim and has constructed buildings thereon and

occupied the same for an Army post, to such an extent that it has been and is now impossible for claimant to carry on mining operations there, to its great loss and damage.

The fair and reasonable value of said placer mining claim when taken by the United States was not less than one hundred thousand dollars (\$100,000). The fair and reasonable value of the use and occupancy of said claim by the United States since it was so taken by the United States on December 8, 1900, is not less than seven thousand five hundred dollars (\$7,500) for each and every year since that date.

### IX.

Claimant, therefore, by reason of the facts herein stated avers that the said defendant, the United States, became and was indebted to it for the value of said placer mining claim so taken from it, the sum of \$100,000, and for the use and occupancy thereof from December 8, 1900, the further sum of \$7,500 per annum.

In all the defendant became and was indebted to claimant in the full sum of \$100,000 and \$7,500 per annum from December 8, 1900, which it has declined and refused to pay, and still refuses to pay, and therefore claimant prays judgment of this court against the defendant, the said United States, for such sum; further averring that its said claim has not, nor any part thereof, nor any  
18 interest therein, been transferred or assigned by it, and that claimant is justly entitled to said last-mentioned amounts from the said defendant after allowing all just credits and offsets.

THE NORTH AMERICAN TRANSPORTATION &  
TRADING COMPANY,

By MCGOWAN, SERVEN & MOHUN,

*Attorneys for Petitioner.*

SERVEN & JOYCE,

*1422 F St. N. W., Washington, D. C.*

DISTRICT OF COLUMBIA,

*City of Washington, ss:*

Before me, the undersigned, a notary public in and for the said District and city, personally appeared A. R. Serven, one of the attorneys for the claimant herein, and being duly authorized to verify this petition, and being duly sworn, deposes and says that he has read the foregoing petition and knows the contents thereof; that the matters and things therein stated of his own knowledge are true and that the matters and things therein stated upon information and belief he believes to be true.

A. R. SERVEN.

Subscribed and sworn to before me this 15th day of April, A. D. 1918.

W. B. JAYNES,  
*Notary Public, D. C.*

[SEAL.]

19 IV. General traverse.

Court of Claims.

THE NORTH AMERICAN TRANSPORTATION & TRADING COM-  
pany, a Corporation,

vs.

THE UNITED STATES

No. 29905.

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

V. Argument and submission of case.

On April 16, 1918, this case was argued and submitted by A. R. Serven, Esq., for the claimant, and by R. P. Whiteley, Esq., for the defendants.

20 VI. Findings of fact, conclusion of law, and opinion of the court, by Hay, J. Filed April 29, 1918.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

The plaintiff is a duly organized corporation under the laws of the State of Illinois and at all times hereinafter mentioned was engaged in carrying on the business of transportation, trading, and mining in the United States, the Territory of Alaska, and elsewhere.

II.

On July 1, 1899, the plaintiff by its duly authorized agent, N. P. R. Hatch, discovered and duly located a placer-mining claim of fifteen and one-half acres on the public domain of the United States near the confluence of the Nome River and Bering Sea, in the Territory of Alaska, by complying with all legal requirements therefor. Thereafter, on August 8, 1899, plaintiff, by its duly authorized agent, filed for record in the office of the recorder for the Cape Nome mining district the location notice, which was thereupon duly recorded in Volume XVI at page 63 of the official records of said recorder's office, which said location notice complied in all respects with the laws of the United States.



## III.

Before the end of the year following the location of this claim, the plaintiff, by its agents, had erected thereon a tool and storage log cabin about 14 by 25 feet in size and sunk six or seven prospect pits to a depth of from 7 to 10 feet about 100 feet apart on said claim, and a timbered shaft 5 by 7 feet and 22 feet in depth, which pits and shaft disclosed a deposit of auriferous ruby sand and gravel, and showed that the claim was well adapted for placer mining. The plaintiff also had placed a line of posts around the exterior land boundaries of said claim, all of which, including the cost of said cabin, amounted to an expenditure thereon of about \$600. The plaintiff has been paid by the United States for the cabin erected on said claim.

The plaintiff during said year made due application for a survey for patent to said placer claim and also had the claim surveyed by a United States deputy mineral surveyor, Charles W. Garside.

## IV.

Gen. Randall, an officer of the Army of the United States commanding the United States troops in Alaska, on or about July 1, 1900, without lawful authority, took possession of a tract of land in which was included the mining claim of the plaintiff. The plaintiff, being unable to withstand the authority of said officer, gave him possession of said mining claim, at the same time demanding compensation therefor, and this was promised it by the said officer.

He then recommended to the Secretary of War that said tract of land be used as a site for an Army post; and on December 8, 1900, the President of the United States issued an order reserving from sale and setting aside for military purposes the tract of land in which was included the mining claim of the plaintiff. The President in said order stated that said land was reserved and set aside subject to any legal rights which might exist to any land within its limits. The United States have been in possession of said tract of land, including the mining claim of the plaintiff, and have established thereon a military post, upon which they have erected buildings, and have taken and occupied said tract of land for more than 17 years.

At no time since Gen. Randall took possession of said land has the plaintiff been able to operate its claim or do any further mining work thereon because of the taking by the United States of said tract of land, which includes the mining claim of the plaintiff, the buildings erected by the United States being on that portion of the land whereon is located the mining claim of the plaintiff.

## V.

The reasonable value of the mining claim of the plaintiff when it was taken under authority of the President's order of December 8, 1900, was \$23,800.

## CONCLUSION OF LAW.

The court upon the foregoing findings of fact decides as a conclusion of law that the plaintiff is entitled to recover the sum of \$23,800. It is therefore adjudged and ordered that the plaintiff recover of and from the United States the sum of twenty-three thousand eight hundred dollars (\$23,800).

22

## OPINION.

Hay, Judge, delivered the opinion of the court:

The plaintiff brings this suit to recover the value of a mining claim taken from it by the defendants. On July 1, 1899, the plaintiff discovered and duly located a placer mining claim on the public domain of the United States near the Nome River and Bering Sea in the Territory of Alaska. It complied with all legal requirements in locating said claim and filed for record in the office of the recorder for the Cape Nome mining district the location notice, which was duly recorded in Volume XVI, page 63, of the official records of said recorder's office. The said notice complied in all respects with the laws of the United States. Before the end of the year following the location of the aforesaid claim the plaintiff had erected thereon a tool and storage log cabin about 14 by 25 feet in size and had sunk six or seven prospect pits to a depth of from 7 to 9 feet about 100 feet apart on said claim and had sunk a timbered shaft 5 by 7 feet and 22 feet in depth. These pits and shaft disclosed a deposit of auriferous ruby sand and gravel and showed that the claim was well adapted for placer mining. The plaintiff also had placed around the exterior land boundaries of said claim a line of posts, all of which, including the cost of said cabin, amounted to an expenditure on the claim of \$600. This cabin was afterwards paid for by the United States. The plaintiff during the year 1899 and 1900 made application for a survey for patent to said placer claim, and also had the claim surveyed by the United States deputy mineral surveyor.

About July 1, 1900, Gen. Randall, an officer of the Army of the United States, who at that time commanded the troops of the United States in Alaska, took possession of a tract of land, including the mining claim of the plaintiff, and announced that he intended to use the same as a site for an Army post. He was not then authorized to select any part of the public domain for that purpose, nor had the President of the United States reserved or set apart any of said tract of land for military purposes. However, he called upon the plaintiff to give possession of its said mining claim, and the plaintiff, not being able to withstand his authority, but at the same time demanding compensation for its said claim, gave up the possession thereof to said officer. Gen. Randall then recommended to the Secretary of War that said tract of land should be used as a site for an Army post, and on December 8, 1900, the President of the United States issued an order reserving from sale and setting aside for military purposes the

tract of land in which was included the mining claim of the plaintiff. The petition in this case was filed on the 7th day of December, 1906.

The tract of land so taken by the United States, in which tract was included the mining claim of the plaintiff, has been occupied by the defendants and used by them as an Army post ever since the order of the President was issued, and the buildings erected on said land are located on that portion of the land whereon is located the mining claim of the plaintiff. And by reason of the taking of this land by the defendants the plaintiff has been unable to operate its claim or to do any further mining work thereon.

The facts above recited show that the plaintiff had acquired a right to this placer claim by fully complying with the law, and that  
28 the United States had notice of the claim of the plaintiff when the land on which it was located was taken by the defendants for military purposes. A mining claim which has been perfected in accordance with law is property, and when perfected it has the effect of a grant by the United States of the right of present and exclusive possession. *Belk v. Meagher*, 104 U. S., 279, 283.

Where there is a valid location of a mining claim, the area becomes segregated from the public domain and the property of the locator. *St. Louis Mining Co. v. Montana Mining Co.*, 171 U. S., 650, 655. In the case of *Gwillim v. Donnellan*, 115 U. S., 45, 49, the court says: "A valid and subsisting location of mineral lands, made and kept up in accordance with the provisions of the statutes of the United States, has the effect of a grant by the United States of the right of present and exclusive possession of the lands located." And the locator, in the opinion of the court, will be entitled to possession against the United States as well as against any other defendant.

The title to the land which was set apart for military purposes was in the United States, but the mining claim of the plaintiff which it had perfected under the provisions of the statutes of the United States was its property, and if taken from it by the United States it is entitled to just compensation therefor under the fifth amendment of the Constitution.

It is always more or less difficult to determine the value of mining property. In this case the evidence is conflicting and witnesses in the case differ widely as to the value of the mining claim of the plaintiff. One witness puts its value at \$300,000, while another witness says it has no value at all. But that the claim has some value may, we think, be deduced from all the evidence in the case. There is, of course, in it an element of speculation, but situated as it was in a country where claims of this character were constant subjects of barter and sale and where similar claims had yielded large fortunes to their discoverers, it may well be said that if the claim had been exploited it would have been one of considerable if not of great value. At best, evidence of its value is largely a matter of opinion, and taking into account the opportunities of the witnesses to form intelligent judgments who have testified in this case, we are of the opinion that the value of the

plaintiff's claim when it was taken by the defendants was \$23,800, and judgment will be entered for that amount in favor of the plaintiff. It is so ordered.

Downey, Judge; Barney, Judge; Booth, Judge; and Campbell, Chief Justice, concur.

24

# VII. Judgment of the court.

At a Court of Claims held in the City of Washington on the 29th day of April, A. D. 1918, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that The North American Transportation and Trading Company, a corporation, as aforesaid, is entitled to recover and shall have and recover of and from the defendants, the United States, the sum of twenty-three thousand and eight hundred dollars (\$23,800).

BY THE COURT.

# VIII. History of proceedings after entry of judgment.

On June 26, 1918, the defendants filed a motion for a new trial and for amendment of findings.

On November 11, 1918, this motion was overruled by the court.

# 25 IX. Defendants' application for and allowance of an appeal.

From the judgment rendered in the above-entitled cause on the 11th day of November, 1918, in favor of claimant, the defendants, by their Attorney General, on the 7th day of February, 1919, make application for, and give notice of, an appeal to the Supreme Court of the United States.

WM. L. FRIERSON,  
*Assistant Attorney General.*

Filed February 7, 1919.

Ordered: That the above appeal be allowed as prayed for.

Feb. 10, 1919.

BY THE COURT.

# X. Claimant's application for and allowance of an appeal.

From the judgment rendered in the above-entitled cause on the 11th day of November, 1918, the claimant by its attorneys, this 8th day of February, 1919, makes application for, and gives notice of, an appeal to the Supreme Court of the United States.

SERVEN & JOYCE,  
*Attorneys for Claimant.*

Filed February 8, 1919.

Ordered: That the above appeal be allowed as prayed for.

Feb. 10, 1919.

BY THE COURT.

26

Court of Claims.

THE NORTH AMERICAN TRANSPORTATION & TRADING COM- pany, a Corporation, <i>vs.</i> THE UNITED STATES.	}	No. 29,905.
--	---	-------------

I, Sam'l. A. Putman, Chief Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case; of the findings of fact, conclusion of law, and opinion of the court by Hay, J.; of the judgment of the court; of the application of the defendants and claimant for, and the allowance of, appeals to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington City this twelfth day of February, A. D. 1919.

[SEAL.]

SAM'L A. PUTMAN,  
*Chief Clerk Court of Claims.*

(Endorsed:) File No. 27,003. Court of Claims. Term No. 917. The United States, Appellant, *vs.* The North American Transportation & Trading Company. File No. 27,004. Term No. 918. The North American Transportation & Trading Company, Appellant, *vs.* The United States. Filed March 15th, 1919. File Nos. 27,003 and 27,004.

○

# In the Supreme Court of the United States.

OCTOBER TERM, 1919.

THE UNITED STATES, APPELLANT,	} No. 319.
v.	
NORTH AMERICAN TRANSPORTATION	
Company.	

*Appeal from Court of Claims.*

## **MOTION OF APPELLANT TO REMAND FOR ADDITIONAL FINDINGS OF FACT.**

Now comes the appellant, by the Solicitor General, and moves the court to remand this case to the Court of Claims with instructions to make and certify as part of the record herein findings of fact on the several questions of fact following, to wit:

### I.

Whether or not George M. Randall, brigadier general commanding the Department of Alaska on September 3, 1900, wrote the following letter from headquarters of the Department of Alaska to The Adjutant General, United States Army, Washington, D. C. (C. Cls. Rec., 104, 105):

HEADQUARTERS DEPARTMENT OF ALASKA,  
FORT ST. MICHAEL, ALASKA,  
*September 3, 1900.*

TO THE ADJUTANT GENERAL,  
UNITED STATES ARMY,  
*Washington, D. C.*

SIR: I have the honor to request that an Executive order be issued setting apart the

following-described tract of land in the town of Nome, Alaska, viz: Initial point bearing S.  $66^{\circ} 50'$  E. 1,669 feet, from United States landmark No. 1 near mouth of Snake River; from said initial stake N.  $23^{\circ}$  E. 107 feet; thence N.  $69^{\circ}$  W. 14 feet; thence N.  $27^{\circ} 25'$  E. 160 feet; thence S.  $70^{\circ}$  E. 152 feet; thence S.  $26^{\circ} 15'$  W. 422 feet 8 inches to southeast corner on beach at mean high tide; thence N.  $69^{\circ}$  W. 102 feet; thence N.  $27^{\circ} 25'$  E. 146 feet; thence N.  $57^{\circ}$  W. 35 feet to point of beginning.

This piece of ground has been occupied by the detachment stationed in the town of Nome for the past year, and its irregular shape is due to the boundary lines not having been accurately established in the beginning.

It is desired to retain this ground under the War Department for the present, but to allow the court and customs services to use it and the buildings thereon temporarily, as indicated in my telegram of August 2, 1900, provided the detachment of troops can be safely withdrawn to the post proper at the mouth of Nome River.

I have the honor further to recommend the setting apart of the following-described tract of land near the mouth of the Nome River, upon which the buildings for the permanent post are being erected, viz: Beginning at a stake at point of "spit," mouth of Nome River, and running thence south of east along the coast of Bering Sea 1 mile; thence north to center of channel of Nome River; thence



down said channel to mouth of river opposite stake first mentioned.

Very respectfully,

GEO. M. RANDALL,  
*Brigadier General, U. S. V.,  
Commanding Department.*

[First indorsement.]

ADJUTANT GENERAL'S OFFICE,  
*Washington, October 3, 1900.*

Respectfully submitted to the Secretary of War.

H. C. CORBIN,  
*Adjutant General.*

## II.

Whether or not on March 9, 1900, and also on September 19 and September 26, 1900, the Secretary of War, from appropriations made by Congress, authorized and approved the expenditure of thousands of dollars in the erection of barracks and other buildings upon the land located as a placer mining claim by the North American Transportation and Trading Company (report of War Department filed June 26, 1918, in the Court of Claims).

## III.

Whether or not the military authorities of the United States retained continuous possession of the land located as a placer mining claim by the North American Transportation and Trading Company, from July 1, 1900, to December 8, 1900, the date of

the issuance of the Executive Order withdrawing the land from entry. (C. Cls. Rec. 64; 80-81; 104-105; 108-111; 114-117.)

The Court of Claims failed to make findings of fact on foregoing questions although requested so to do by appellant.

ALEX. C. KING,  
*Solicitor General.*

FRANK DAVIS, JR.,  
*Assistant Attorney General.*

## **BRIEF.**

---

### **STATEMENT.**

This suit was brought in the Court of Claims for compensation for the taking and use by the military authorities of the United States of some fifteen acres of land located by appellee as a placer gold mining claim, near the town of Nome, Alaska. On July 1, 1899, the plaintiff discovered and duly located this claim on the public domain of the United States near the confluence of the Nome River and Behring Sea. During the years 1899 and 1900 the requisite assessment work was done and the claim was surveyed for the appellee by the United States deputy mineral surveyor.

On or about July 1, 1900, General Randall, United States Army, commanding the Department of Alaska, took possession of a tract of land including the mining claim of appellee, and announced that he intended to use same as a site for an Army post. The appellee, being unable to withstand the authority of said officer, gave him possession of said mining claim, at the same time demanding compensation therefor, and this was promised by General Randall. On September 3, 1900, General Randall wrote the Adjutant General, United States Army, Washington, D. C., recommending the issuance of an Executive order setting apart a certain tract of land near the mouth

of the Nome River, which included appellee's claim, "upon which buildings for the permanent post are being erected." This report was submitted to the Secretary of War by the Adjutant General on October 3, 1900, and in accordance with the recommendation, on December 8, 1900, the President of the United States issued an order reserving from sale and setting aside for military purposes the tract of land in which was included appellee's mining claim, stating that said land was reserved and set aside subject to any legal rights that might exist to any lands within its limits.

The tract of land so taken by the United States has been occupied and used as an Army post since possession was first taken, and the buildings that have been erected on said land are located on that portion of the tract which had been the placer claim of appellee.

Appellee's petition was filed in the Court of Claims December 7, 1906. On April 29, 1918, findings of fact and conclusions of law were made by the court and judgment entered for appellee in the sum of \$23,800. On January 26, 1918, appellant filed a motion for a new trial and for amendment of the findings, which motion was overruled on November 11, 1918. On February 7, 1919, appellant made application for an appeal to the Supreme Court, which appeal was allowed February 10, 1919.

#### **ARGUMENT.**

At the trial of this cause appellant pleaded the bar of the statute of limitations, alleging that the land in

question had been taken under the right of eminent domain on or about July 1, 1900, or in all events prior to December, 1900. The petition was not filed until December 7, 1906. The court was requested to find that immediately upon taking possession of the land the army officers and their assistants began to erect barracks and other military buildings thereon and that permanent possession was taken from July 1, 1900. The record shows that on September 3, 1900, the general commanding the Department of Alaska had written the Adjutant General advising him that buildings for the permanent post near the mouth of the Nome River were then being erected, and this fact was not controverted in any way by the appellee. The Court of Claims, however, has failed to find this fact and has merely found that "The United States have been in possession of said tract of land, including the mining claim of the plaintiff, and have established thereon a military post upon which they have erected buildings, and have taken and occupied said tract of land for more than 17 years" (p. 13, Tr. Rec.).

The indefinite statement that the land has been occupied for more than 17 years does not sufficiently present the real facts to the appellate court so that it can be determined when the taking actually occurred. Appellant is, therefore, clearly entitled to a finding setting forth the fact that as early as September 3, 1900, Gen. Randall, commanding the Department of Alaska, advised the Adjutant General, and through him the Secretary of War, that the

buildings for the permanent post were then being erected upon appellee's property.

Defendant also asks that the court be required to find definitely the length of time that the plaintiff's property has been in the possession of the United States instead of the indefinite statement that it has been occupied for more than 17 years. It is requested, therefore, that it be found as a fact whether or not the United States have been in continuous possession of the land since July 1, 1900. This is a fact that is not controverted in any way in the record, and while it may be inferred from the last paragraph of the court's fourth finding, it is submitted that there should be no doubt as to such an essential fact.

In the motion for a new trial, filed in due time in the court below, appellant also requested the court to find that from appropriations made by Congress the Secretary of War on March 9, 1900, and also on September 19 and September 26, 1900, authorized and approved the expenditure of thousands of dollars in the erection of barracks and other permanent buildings upon the land in question.

There can be no doubt that appellant is entitled to such a finding, so that the legal effect of the same may be determined by this court. It will be argued that the action of the Secretary of War in authorizing the expenditure of money upon the erection of buildings upon appellee's land, the expenditure being made from an appropriation provided by Congress, gave the necessary ratification and sanction to the

act of the Army officer, and if that be so, the legal taking occurred on or about July 1, 1900, or, in any event, prior to December, 1900.

It seems clear that these property rights have been held and used by the agents of the United States under the sanction of legislative enactments by Congress, for the appropriation of money specifically for the construction of the dam from the Maryland shore to Conn's Island was, all the circumstances considered, equivalent to an express direction by the legislative and executive branches of the Government to its officers to take this particular property for the public objects contemplated by the scheme for supplying the Capital of the Nation with wholesome water. The making of the improvements necessarily involves the taking of the property; and if, for the want of formal proceedings for its condemnation to public use, the claimant was entitled at the beginning of the work to have the agents of the Government enjoined from prosecuting it until provision was made for securing in some way payment of the compensation required by the Constitution—upon which question we express no opinion—there is no sound reason why the claimant might not waive that right and, electing to regard the action of the Government as a taking under its sovereign right of eminent domain, demand just compensation. *Kohl v. United States*, 91 *United States v. Great Falls Mfg. Co.*, 112 U. S. 645, 656. U. S. 367, 374.



Here it is the purpose and right of appellant to have the facts found, so that the legal effect may be determined by this court. (*United States v. Pugh*, 99 U. S., 265.)

The Court of Claims in its opinion states that Gen. Randall took possession of a tract of land including the mining claim of appellee about July 1, 1900, but that he was not then authorized to select any part of the public domain for that purpose, nor had the President of the United States reserved or set aside any of said tract of land for military purposes. The court further states that Gen. Randall recommended to the Secretary of War that said tract should be used for an Army post, and that on December 8, 1900, the President issued an order reserving the same from sale and setting it aside for military purposes; that the tract so taken has been occupied by the United States and used as an Army post ever since the order of the President was issued, and that buildings erected on said land are located on that portion of the land whereon is located the mining claim of appellee.

Here again defendant repeats that the record shows the tract taken to have been occupied by the United States and used as an Army post not only since the order of the President was issued, but since July 1, 1900, and these facts should be found by the Court of Claims so that this court can determine when the taking under the right of eminent domain actually occurred. It is submitted that since the appellee had established possessory title to his mining claim prior

to July 1, 1900, the said title could not be taken from him by any officer of the United States without the authority of Congress, either expressly or by necessary implication.

This authority is found in the Army appropriation acts, particularly the act of March 7, 1900, authorizing the expenditure of the public funds upon barracks and quarters and leaving the designation of the barracks and quarters and the amounts to be expended (within the limits of the appropriation) to the discretion of the Secretary of War. The Secretary of War exercised that discretion on March 9, 1900, when he approved the expenditure of \$50,000 for barracks and quarters at Cape Nome, and again on September 19 and on September 26, 1900, when he authorized and approved the expenditure of thousands of dollars upon the barracks and other buildings then being erected upon the premises. These facts are all contained in the newly discovered evidence filed in the Court of Claims in support of motion for a new trial, said evidence not having been known to the Attorney General or his assistants before the case was tried and due effort having been made before trial to obtain such evidence. Appellant is therefore entitled to the findings of fact requested, which show the appropriation of money by Congress for the erection of barracks upon appellee's land, as showing that the devotion of this land to a public use has been authorized by Congress. If there has been no such authorization, the act of the President in withdrawing the land from entry could not create a claim against the Govern-

ment any more than the act of the officer who took possession on July 1, 1900, which the court below has found to be without lawful authority. This presidential reservation withdrew what the United States then owned. It was not and did not seek to appropriate any legal rights to any land already acquired. These were to be acquired by other means. (This order simply made a public *reservation*.)

The suit in this case is based on the acquiescence of plaintiff in the legality of the taking of General Randall under the authority of the act of March 7 1900, and the action of the Secretary of War thereunder.

If an officer of the United States assumes, by virtue alone of his office, and *without the authority of Congress*, to take such matters under his control, he will not, in any legal or constitutional sense, represent the United States, and what he does or omits to do, without the authority of Congress, can not create a claim against the Government "founded upon the Constitution." It would be a claim having its origin in a violation of the Constitution. The constitutional prohibition against taking private property for public use without just compensation is directed against the Government, and not against individual or public officers proceeding without the authority of legislative enactment. The taking of private property by an officer of the United States for public use, without being authorized, expressly or by necessary implication to do so by some act of Congress, is not the act of the Government.

So that whether we look at the jurisdiction of the court below, in respect either of claims *alleged to be founded upon the Constitution* or to arise from contract, the plaintiffs can not maintain this *suit* against the Government; for they have received the entire sums which Congress appropriated to be paid out of the Treasury on account of rent of buildings or quarters for the Civil Service Commission. (*Hooe v. United States*, 218 U. S., 322-336, at p. 335.)

It seems clear, therefore, that if there has been any legal taking it has been from July 1, 1900, the time that physical possession was taken by the military authorities, or shortly thereafter, when buildings were erected upon the land under the authorization of the Secretary of War, from appropriations made by Congress for that purpose. It is equally clear that appellant is entitled to the additional findings of fact requested, from which this court can determine their legal effect, the said facts being undisputed and no weighing of evidence required.

#### CONCLUSION.

It is respectfully submitted that the motion herein prayed for should be granted and the case remanded for further proceedings.

ALEX. C. KING,  
*Solicitor General.*

FRANK DAVIS, Jr.,  
*Assistant Attorney General.*